

4
No. 90-693

Supreme Court, U.S.
FILED
JAN 17 1991
JOSEPH F. SPANIOLO, JR.
CLERK

**In The
Supreme Court of the United States
October Term, 1990**

CURTIS REED JOHNSON,

Petitioner,

v.

HOME STATE BANK,

Respondent.

**Petition For Writ Of Certiorari To The
United States Court Of Appeals For The
Tenth Circuit**

RESPONDENT'S SUPPLEMENTAL BRIEF

**CALVIN D. RIDER
SMITH, SHAY, FARMER & WETTA
200 West Douglas
Olive W. Garvey Bldg.
Ste. 830
Wichita, KS 67202
(316) 267-5293**

Counsel of Record for Respondent

No. 90-693

In The
Supreme Court of the United States
October Term, 1990

CURTIS REED JOHNSON,

Petitioner,

v.

HOME STATE BANK,

Respondent.

**Petition For Writ Of Certiorari To The
United States Court Of Appeals For The
Tenth Circuit**

RESPONDENT'S SUPPLEMENTAL BRIEF

A. Supplemental Information

Home State Bank submits this Supplemental Brief in response to Petitioner's Supplemental Brief, where he brought to the Court's attention the decision in *In Re Lawson*, 120 B.R. 859 (Bankr. W.D. Ky. 1990), aff'd No. C90-0517-L(J), slip op. (W.D. Ky. October 31, 1990). The Petitioner, Curtis Reed Johnson, argues that the *Lawson* case will create a split among the Circuit Courts of Appeal.

As with all other cases cited by the Petitioner, the *Lawson* case presents different facts and issues than those before the Tenth Circuit. The *Lawson* decision, like other decisions relied upon by Petitioner, reviewed a bankruptcy plan proposing to reinstate the debt and cure all arrearages. In the present case, Mr. Johnson's plan does not provide for a cure of any arrearages or propose to reinstate any debt previously discharged in his Chapter 7 plan.

Therefore, neither the *Lawson* case nor any other case cited by Petitioner presents a conflict with the Tenth Circuit's opinion in this case as contemplated by Rule 10 of the Rules of the Supreme Court.

B. Mootness

The question presented for review by Petitioner is now moot. The subject matter of debtor's bankruptcy and petition for certiorari, two quarter sections of land, were sold by sheriff's sale in Edwards County, Kansas, on November 27, 1990. On December 19, 1990, the Edwards County district court judge confirmed the sheriff's sale over the objections of debtor's counsel. The debtor, subsequently, filed in the district court of Edwards County, Kansas, an appeal to the Court of Appeals of the State of Kansas. Debtor primarily argues that his counsel received inadequate notice of the sale of the land and that an incorrect amount was bid for the land at the sheriff's sale.

This case is now moot, as there remains for this Court no actual matters in controversy essential to the decision of this case. If the Kansas Court of Appeals hears the

debtor's appeal, its decision will render the issues before the Supreme Court moot.

A case becomes moot where, pending an appeal from a judgment of a lower court, an event occurs which renders it impossible for the Supreme Court, if it should decide the case in favor of the petitioner, to grant the petitioner any effectual relief. *Mills v. Green*, 159 U.S. 651, 16 S.Ct. 132, 40 L.Ed. 293 (1895); *Tennessee v. Condon*, 189 U.S. 64, 23 S.Ct. 579, 47 L.Ed. 709 (1903). Based upon the sale of the land and Petitioner's failure to make any payments upon that land pursuant to his Chapter 13 bankruptcy plan since 1987, the Petitioner will not be able to retain the land. Thus, a decision in favor of the Petitioner from this Court will not grant him any effectual relief.

C. Conclusion

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

CALVIN D. RIDER
SMITH, SHAY, FARMER & WETTA
200 West Douglas
Olive W. Garvey Bldg., Ste. 830
Wichita, KS 67202
(316) 267-5293

Counsel of Record for Respondent